

REMARKS/ARGUMENTS

Claims 1-4, 7-11, 14-17 and 26-31 are pending in the application. No claims are allowed. Claims 5-6, 12-13 and 18-25 are canceled.

Claims 1, 8 and 17 have been amended. Claim 26 has been canceled without prejudice to subsequent revival. Applicants reserve the right to prosecute claim 26 in a divisional application. Entry of the amendment, reconsideration of the rejection, and allowance of claims 1-4, 7-11, 14-17 and 27-31 are requested.

Applicants gratefully acknowledge the withdrawal of the rejections under 35 U.S.C. § 112.

The Amendment

In order to expedite prosecution of the application and advance the case toward allowance, the claims have been amended. No new matter was introduced by this amendment.

Claims 1, 8 and 17 have been amended to specify that the harvested virus is filtered with a first and second filter, wherein the second filter has a pore size of between 0.1 and 0.5 μm . Support for this amendment can be found on page 7, paragraphs [027] and [028].

Claim 31 has been amended to indicate that the method according to any of claims 1, 8, or 17 is used for large scale production. Support for this amendment can be found on page 3, paragraph [006]; on page 12, example 1, paragraph [048], beginning at line 10; and page 14, paragraph [055], line 2.

Rejection Under 35 U.S.C. §112

New claim 31 is rejected under 35 U.S.C. §112, second paragraph, for being allegedly indefinite. The Office Action indicates that the term "suitable" in "suitable for large scale production" is allegedly unclear because of a lack of definition.

Claim 31 has been amended to indicate that the method is used for large scale production (see "The Amendment", *supra*).

In light of the amendment, Applicants respectfully request that the rejection of claim 31 under 35 U.S.C. §112, second paragraph, be withdrawn.

Rejection Under 35 U.S.C. §103

Claims 1-4, 7-11, 14-17 and 27-31 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Dubensky Jr. *et al.* (USPN 5,789,245) in view of Yu *et al.* (Vaccine (1997) 15(12/13):1396-1404). The rejection is maintained because, according to the Office Action, one would have had a reasonable expectation of success that Dubensky's method would produce Yu's antigen.

To the extent that the rejection applies to the claims as amended, the rejection is respectfully traversed.

The Examiner states that the prior art does not teach or suggest a second filter with a pore size that is less than 0.5 microns. The Office Action then contends that the range claimed as between about 0.1 and about 0.5 microns, does not contribute over the prior art because the limits of the pore size range do not have specific cut-offs. The Examiner concludes that one could reasonably interpret that Dubensky's filter (0.65 microns) falls within the scope of the instant claimed pore size range.

The claims have been amended to specify that the harvested virus is filtered with a first and second filter, wherein the second filter has a pore size of between 0.1 and 0.5 microns. As such, the limits of the pore size range have been clearly defined and distinguished over the prior art. This amendment was made in order to advance the claims toward allowance and must not be construed as an acquiescence in the rejection. It is also reiterated for the record (as in the previous response) that the skilled artisan would never have been motivated to consult Dubensky since Dubensky's disclosure relates to an entirely different technical field (*i.e.*, introducing foreign genes into target cells using a recombinant virus as a shuttle) than the instant invention (*i.e.*, vaccine development).

Appl. No. 10/006,671
Amdt. dated June 23, 2004
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group

PATENT

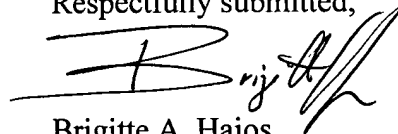
In light of the amendment and the arguments presented above, Applicants respectfully request that the rejection of claims 1-4, 7-11, 14-17 and 27-31 under 35 U.S.C. §103(a), be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brigitte A. Hajos', with a stylized flourish at the end.

Brigitte A. Hajos
Reg. No. 50,971

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 650-326-2400
Fax: 415-576-0300
Attachments
BAH:bah
60206771 v1